NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MARY ELIZABETH DEAN, ET AL
Petitioners,

v.

COUNTY OF BRAZORIA, TEXAS, ET AL
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent opposes the petition for writ of certiorari on the following ground:

THE DECISION IS OBVIOUSLY CORRECT AND INVOLVES NO CONFLICT OF OPINION OR OTHER BASIS FOR REVIEW BY THIS COURT.

ARGUMENT

Petitioner no longer seeks damages from the City of Clute because of the actions of its police officer, Leroy Maddox. Petitioner seeks only the recovery of attorneys' fees as against the City of Clute pursuant to 42 U.S.C. § 1988. Petitioner now recognizes in his questions for review by this Court that the District Court and Fifth Circuit Court of Appeals were correct in finding that, as a matter of law, the City of Clute was not liable to any of the Petitioners. Consequently, none of the Petitioners are "prevailing parties" with regard to the City of Clute and therefore not entitled to attorneys' fees.

In addition, to allow the coffers of the City of Clute, Texas, to be responsible for the attorneys' fees assessed in this case, when it has been determined that the City is not liable to the Petitioners, would be contrary to the decision in *Monell v. Department of Social Services of the City of New York, et al,* 98 S.Ct. 2018, in that it would allow a recovery against the City when the City's only exposure would be pursuant to the doctrine of *respondeat superior.*

In none of the cases cited by Petitioner were the attorneys' fees assessed in a situation where the only liability of the governmental entity was based on the doctrine of *respondeat superior.* Consequently, to allow attorneys' fees to be assessed in this situation would violate the Eleventh Amendment and would abolish the doctrine of sovereign immunity.

With regard to the assessment of attorneys' fees and the method used by the District Court in determining same, there has been no showing that the judicial action

of the District Court was arbitrary, fanciful, or unreasonable, or that the Trial Court abused its discretion in any way. Rather, the record is clear that the Trial Court followed the analysis as required by *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir., 1974).

CONCLUSION

The decision of the Trial Court and the Fifth Court of Civil Appeals is obviously correct and no error can be found in either Court's opinion in denying Petitioners the right to recover attorneys' fees against the City of Clute, Texas, or considering the various elements involved therein; consequently, the petition for certiorari should be denied.

Respectfully submitted,

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